

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

SCOTTIE D. NELSON,
TDCJ-CID ID No. 1664978,
Previous TDCJ ID Nos. 738633, 1042399, and
1376176,
SID No. 05506902

Plaintiff,

V.

JEFF A. DURBEN, Correctional Officer IV,

Defendant.

CIVIL ACTION NO.
5:13-CV-00036-C

ECF

ORDER

Plaintiff Scottie D. Nelson, acting *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983 on February 19, 2013, and was granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(b). He alleged that Jeff A. Durben, a Correctional Officer IV at the TDCJ-CID Price Daniel Unit in Snyder, Texas, threatened him with vulgar language and sexual remarks on November 27, 2012. The Defendants have not filed an answer.

On March 6, 2013, the complaint was transferred to the docket of the United States Magistrate Judge, who conducted an evidentiary hearing pursuant to *Spears v. McCotter*, 766 F.2d 179, 181-82 (5th Cir. 1998) on March 19, 2013. When Plaintiff failed to consent to the jurisdiction of the Magistrate Judge, she completed the preliminary screening pursuant to 28 U.S.C. §§ 1915 and 1915A, filed a Report and Recommendation on April 3, 2013, and transferred the complaint back to this Court. Plaintiff filed a reply to the Report and Recommendation on April 17, 2013.

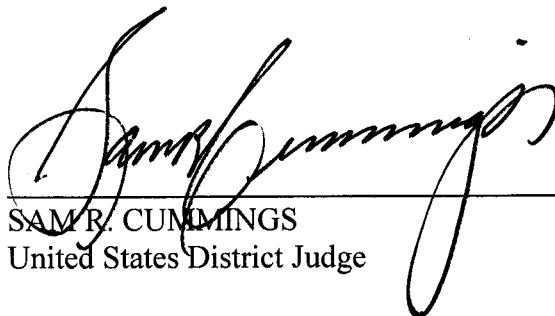
The undersigned District Judge has made an independent examination of the record in this case and finds that Plaintiff's objections should be overruled and the Magistrate Judge's findings and conclusions should be ADOPTED.

It is, therefore, **ORDERED**:

- (1) Plaintiff's objections are overruled.
- (2) Civil Action No. 5:13-CV-00036-C and all claims alleged therein are DISMISSED with prejudice as frivolous and for failure to state a claim.
- (3) Any pending motions are DENIED.
- (4) The dismissal of Plaintiff's complaint does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See* 28 U.S.C. § 1915(b)(1) ("Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner **shall be required to pay the full amount of a filing fee.**") (emphasis added); *Hatchet v. Nettles*, 201 F.3d 651, 654 (5th Cir. 2000) ("No relief from an order directing payment of the filing fee should be granted for a voluntary dismissal.").
- (5) Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$455.00 pursuant to the PLRA, and he must submit an application to proceed *in forma pauperis* and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

Judgment shall be entered accordingly.

Dated May 9, 2013.



SAM R. CUMMINGS
United States District Judge